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FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC 0954
RUEHLMC/MILLENNIUM CHALLENGE CORP
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C O N F I D E N T I A L SECTION 01 OF 03 NAIROBI 001614

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E.O. 12958: DECL: 2/14/2031

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SUBJECT: CORRUPTION IN KENYA: CENTRAL BANK GOVERNOR BOOTED
AFTER UNCOVERING MONEY LAUNDERING AND TAX EVASION

Ref: A. Nairobi 607, B. Nairobi 527, C. Nairobi 494, D.

Nairobi 395

Classified by Econ Counselor John Hoover for reasons 1.4
(B) and (D).

¶1. (C) Summary: There is likely much more than meets the eye in the recent arrest and suspension of the governor of the Central Bank of Kenya (CBK) for "abuse of office." In the case, it appears CBK Governor Andrew Mullei erred in hiring his son to help conduct investigations into irregularities in Kenya's banking system. But the twist is that the very results of those investigations appear to have prompted Mullei to recommend closure of a local bank based on evidence of a massive money laundering and tax evasion scam involving a shadowy but influential private businessman. Two days after making that recommendation to the Minister of Finance, Mullei was arrested, and then suspended by the government on dubious legal grounds. If it turns out Mullei was pushed out for threatening to expose a major money laundering ring, then the Kibaki administration may find itself complicit in yet another mega-scandal. End summary.

Central Bank Governor Charged and Suspended

¶2. (SBU) On March 23, Central Bank of Kenya (CBK) Governor Andrew Mullei was charged in court on four counts of "abuse of office" for improperly awarding consultancy contracts to four individuals, including his son. Mullei pled not guilty and was released on bond. Two days later, the Minister of Planning and National Development announced that Mullei was suspended. Mullei protested on both legal and substantive grounds and refused to resign. The GOK nonetheless moved ahead and appointed Deputy CBK Governor Jecinta Mwatela acting Governor on March 30. The initial press spin on Mullei's being charged and suspended was initially positive, with Reuters noting on March 23 that "the fact that the case has been brought may in fact help restore some of [President] Kibaki's damaged credibility in the eyes of Western donors and angry Kenyans."

¶3. (SBU) As is so often the case in Kenya, however, the Mullei case is not as simple as it appears on the surface. That Mullei hired his son and three other contract consultants is not in dispute, and in this respect alone,

Mullei provided the rope with which to hang him by creating at the very least the appearance of conflict of interest and nepotism. He had long been known to be under investigation by the Kenya Anti-Corruption Commission in connection with the \$36,000 contract provided to his son, Silla Mullei.

Nepotism, Maybe, But Not Grand-scale Corruption

¶4. (SBU) However, a series of questions have arisen as to the true motives of the GOK in pursuing a case against Mullei, either at all, or in particular, at this time. First, the abuse of office charge over a \$36,000 contract, while not to be condoned, is almost trivial in the Kenyan context of large-scale procurement scams and land giveaways which have cost the country billions of dollars in recent years -- and which remain largely unresolved. Moreover, ministries frequently do business with companies owned by the minister or other ministry officials. While the press reports on such conflicts of interest occasionally and the practice is increasingly frowned upon, it is not seen as a high priority in the war on corruption.

The Legal Argument: Dismissal Appears Improper

¶5. (SBU) Moreover, the GOK appears to have broken its own laws in suspending Mullei. Mullei in theory enjoyed security of tenure through the CBK Act, which says the governor can only be dismissed if convicted of a crime, or on the orders of President, who must first appoint an investigatory tribunal before doing so. But Mullei was

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officially suspended not by the President, but by the Secretary to the Cabinet. In doing so, the GOK used as its

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legal basis the Economic Crimes Act, which says public officers are to be suspended from their duties when charged with a crime. In the ensuing legal debate in the media and in Parliament, the more convincing school of thought has argued that Mullei was illegally dismissed because the CBK Act, thanks to its greater specificity, should take precedence. Mullei has challenged the dismissal on these grounds, so the issue will eventually be settled in Kenya's constitutional court.

The Plot Thickens: Money Laundering and Tax Evasion

¶6. (C) A far more disturbing development emerged the week after Mullei's arrest and suspension when Econ/C met with Terry Ryan, one of the four consultants allegedly improperly hired by Mullei. Ryan, an elderly white Kenyan macro-economist who appears to have no political axes to grind, said that Mullei's dismissal came two days after Mullei had written to Minister of Finance Amos Kimunya reporting on the results of an investigation the four consultants had conducted over a two-year period. The letter recommended closure of one or more "entities" due to evidence of a massive money laundering operation -- operations that at times involved transfers of a billion Kenyan Shillings (\$13 million) per day through certain unnamed accounts. Ryan stated that the two events -- delivery of the letter and Mullei's arrest and dismissal -- fell only two days apart and that one sprang directly from the other. Mullei, in short, was arrested and suspended to get him out of the way and stifle action against a major money laundering ring.

¶7. (C) Ryan was unwilling to disclose specifics about the

money laundering investigation, but revealed that Mullei assembled and hired the four-man investigative team after he was appointed in 2003 because he suspected there were a series of undiscovered instances of money laundering and other improprieties in the banking system. Mullei, said Ryan, did not trust his own Bank Supervision Department to do the job well or honestly, and given the secretive nature of the proposed work, was unwilling to advertise the tender publicly. Ryan acknowledges the poor optics of Mullei having hired his son, but noted that the younger Mullei, with a strong financial background, was "eminently qualified" to do the work. All but one of the four contracts, Ryan said, had expired well before the charges were brought against Mullei. Mullei himself has also claimed publicly that the contracts for the four consultants, including the one for his son, had been vetted with and approved by the CBK Board.

18. (C) As if on cue, a copy of the March 20 Mullei-Kimunya letter leaked to the press and then to members of Parliament in early April, confirming and adding detail to the insider's account offered by Ryan. According to press reports beginning April 3, the four-man consultancy team in question had been spun off a much a larger interagency investigative body, dubbed the Joint Action Team. That team, which had been looking at irregularities in the banking system for several years, included investigators from the Kenya Anti-Corruption Commission, the Kenya Revenue Authority (KRA), and a forensic auditor from the Office of Governance and Ethics, at the time headed by anti-corruption czar John Githongo. The forensic auditor from Githongo's office stayed on as a contractor at the CBK, continued working with Mullei's son and Ryan, and was responsible for amassing the detailed accounting data which pointed towards the money laundering operation, according to Ryan.

Tantalizing Details of Money Laundering Ring

19. (SBU) In extracts quoted in the press from the March 20 Mullei-Kimunya letter, it emerges that:

-- "organizations" colluded with "the bank" to evade taxes worth between \$25-40 million per year. Penalties on top of

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this tax evasion would double the amount owed to the KRA.

-- The account of one company showed evasion of value added tax (VAT) of \$3.5 million per year.

-- Other individual bank accounts, which lacked any documentation as to ownership, showed unexplained turnover of tens of millions of dollars per year.

-- "There is every reason to believe" these tax evasion and money laundering operations have been going on for six years, according to the letter.

110. (SBU) Mullei's letter, as quoted in the press, notes that the bank handling these illicit transactions had become "a liability to the probity of the financial sector and I would recommend that you consider withdrawing its license." On April 4, opposition MPs in Parliament shed a bit more light on the scandal, naming the bank in question as the Charter House Bank. They also linked the bank to businessman John Harun Mwau and to Nakumatt Holdings, the owner of Kenya's largest supermarket chain. This tracks closely with what consultant Ryan had earlier told Econ/C, and also jibes with more conjectural (but consistent) hearsay reports linking Mwau to Nakumatt through Mwau's large illicit import operations at Mombasa port. Mwau has long been rumored to have been a major narco-trafficker in the 1990s, and as a sidelight is said to still bring in

legitimate imports through his container terminal business at Mombasa, but does so illegally by not paying import duties. The cheaper goods and laundered proceeds, so the story goes, find their way into Nakumatt supermarkets, in which he owns shares, where they can undersell the competition.

Comment: Petty Corruption or the Next Big Scam?

¶11. (C) The details of the Mullei case remain just fuzzy enough for now that it's not clear if this is simply a case of petty corruption on Mullei's part, or on the contrary, of grand-scale corruption, the attempted exposure of which led to Mullei's demise. For the moment, the outline of what is known points towards Mullei more as a victim than a perpetrator of wrongdoing, but there may be an element of both in this case. That said, if the money laundering and tax evasion scam is as large as reported, it would be on a par with the other mega-scandals of the day. And if it is confirmed that elements of the GOK are complicit in any way, it would further damage what's left of the Kibaki administration's credibility and stability. As such, the GOK's response to Mullei's March 20 letter may constitute both a test and yet another opportunity for the GOK (and in particular for new Finance Minister Amos Kimunya) to make actions speak louder than words in the war on graft. Donors like the World Bank, the IMF, and ourselves need to push the GOK for a full, transparent explanation of the money laundering/tax evasion allegations and of how the GOK plans to deal with them.
Bellamy